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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,889	09/06/2005	Anders Jirskog	S108.12-0035	4935
27367 7590 07/29/2008 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3244				
EXAMINER				
BARKER, MATTHEWM				
ART UNIT		PAPER NUMBER		
3662				
MAIL DATE		DELIVERY MODE		
07/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/518,889

Applicant(s)

JIRSKOG, ANDERS

Examiner

MATTHEW M. BARKER

Art Unit

3662

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Thomas H. Tarcza/
Supervisory Patent Examiner, Art Unit 3662

/Matthew M Barker/
Examiner, Art Unit 3662

Continuation of 11. does NOT place the application in condition for allowance because:

In the response filed 6/25/2008, Applicant argues that given the generally accepted definition of the term "frequency band", it is highly unlikely that a person skilled in the art would contemplate anything other than use of different frequencies within one frequency band in the invention of Schultheiss.

The argument is not convincing because while it is appreciated that numerous specific frequency bands are recognized in the art, the broadest reasonable interpretation of the term is simply any given range of frequencies. Because the claims do not specify any particular bands, the plurality of frequencies disclosed by Schultheiss meet the claim language "at least two different frequency bands"

Applicant also argues that the skilled person would expect the different frequencies to be spread out within a relatively narrow frequency range in the invention of Schultheiss and that because Schultheiss does not indicate anything other than the use of standard level gauging circuitry, a person skilled in the art would have to assume that the different frequencies lie within one frequency band.

The argument is largely moot because Applicant assumes a narrow interpretation of the term "frequency band", but regardless, the argument is not found convincing because as already discussed in prior communications, the separate frequencies of Schultheiss are employed to account for a wide range of operating environments and measured substances (paragraph 0003) which alone implies that there be a substantial difference in the frequencies. However, in further support of the Examiner's position that it would have been obvious to separate the frequencies by a ratio of 1.5:1 or more, reference is made to Burger at al. (5,659,321), submitted on the IDS filed 12/21/2004. Burger discloses a radar level measuring system that may operate on frequency bands of around 5.8 GHz or 24.15 GHz depending on the application, citing among other reasons the same advantage as Applicant (e.g. the effects of surface foam, column 1, lines 51-59). Therefore it is maintained that one of ordinary skill in the art at the time the invention was made would have found it obvious to set the ratio of the transmitted frequencies of Schultheiss at greater than 1.5:1 as in claims 1 and 9 or even 2:1 as in claims 15 and 16.